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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Aug 22, 2017

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CARLOS IBARRA,

Plaintiff,

v.

LT. WELCH,

Defendant.

NO: 1:17-CV-3048-SMJ

**ORDER DISMISSING  
COMPLAINT**

**1915(g)**

By Order filed May 25, 2017, the Court advised Plaintiff of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty days. ECF No. 10. Specifically, Plaintiff's assertion of unspecified "ongoing negligence" was insufficient to state a constitutional deprivation under the Eighth Amendment. *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004).

Plaintiff, a prisoner at the Yakima County Jail, is proceeding *pro se* and *in forma pauperis*. Defendant has not been served. The Court cautioned that failure to amend as directed would result in the dismissal of the complaint for failure to

1 state a claim upon which relief may be granted. Plaintiff did not cure the  
2 deficiencies of his complaint and has filed nothing further in this action.

3       For the reasons set forth above and in the Order to Amend or Voluntarily  
4 Dismiss Complaint, **IT IS ORDERED** that the Complaint, ECF No. 9, is  
5 **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief  
6 may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

7       Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who  
8 brings three or more civil actions or appeals which are dismissed as frivolous or for  
9 failure to state a claim will be precluded from bringing any other civil action or  
10 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious  
11 physical injury.” 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory**  
12 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's complaint**  
13 **may count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and**  
14 **may adversely affect his ability to file future claims.**

15       **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
16 enter Judgment, forward copies to Plaintiff at his last known address, and **CLOSE**  
17 the file. The Clerk of Court is further directed to forward a copy of this Order to  
18 //  
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1 the Office of the Attorney General of Washington, Corrections Division. The Court  
2 certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not  
3 be taken in good faith and would lack any arguable basis in law or fact.

4 **DATED** this 22nd day of August 2017.

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6 SALVADOR MENDEZA, JR.  
United States District Judge

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